

JOHN T. WASTAK : CIVIL ACTION
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v. :
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LEHIGH VALLEY HEALTH NETWORK : NO. 00-4797

In 1997, Plaintiff had been negotiating with a Dr. Edward Weiner to lease office space for the Department of Psychiatry

("Department"). See Compl. at ¶7. In December of 1997, Dr. Michael Kauffman, the Department's Chair, instructed Plaintiff to cease all negotiations with Dr. Weiner. Id. at ¶9. Another employee, Carol Burry, replaced Plaintiff as the Department's representative in the lease negotiations. Id.

On March 12, 1998, Dr. Kauffman informed Plaintiff that he was being terminated from his employment, allegedly because Plaintiff engaged in inappropriate lease negotiations with Dr. Weiner. Id. at ¶10. Plaintiff believed, however, that he was fired due to his age. Id. at ¶11. At the time of his termination, LVH presented Plaintiff with a Release Document, which Plaintiff was asked to sign in connection with severance pay arrangements. Id. at ¶14.

After Dr. Kauffman informed Plaintiff of his termination, Plaintiff was sent to meet with Mary Kay Gooch, a representative of LVH's Human Resources Department. See Pl.'s Resp. at 3. Gooch told Plaintiff the following: 1) LVH was going to hire a replacement for Plaintiff as the Department's Administrator, See Wastak Dep. at 62; 2) if Plaintiff did not sign the Release, he would not receive thirty-six (36) weeks of severance benefits, Id. at 61-62; 3) Plaintiff has twenty-one (21) days within which to sign the Release, Id. at 62; and 4) Plaintiff should consult with an attorney before signing the Release. Id. at 62.

Plaintiff attempted to speak with three attorney's on different occasions. See Pl.'s Resp. at 3. The first attorney claimed to have a conflict of interest with LVH which prevented representation of the Plaintiff. Id. The second attorney was not interested in representing Plaintiff. Id. The third attorney told Plaintiff that his docket was full and had no time to represent Plaintiff. Id. Plaintiff decided to sign the Release within the twenty-one day review period provided for in the Release Document. See Compl. at ¶21.

The Separation Agreement and Release that was signed by Plaintiff is attached to Defendant's Motion at "Exhibit C." The Release states in pertinent part as follows: 1) Plaintiff agreed not to file a lawsuit arising out of any aspect of Plaintiff's employment or the termination of Plaintiff's employment with Defendant, including the Age Discrimination in Employment Act ("ADEA") and the Pennsylvania Human Relations Act ("PHRA"), See Release at ¶IV; 2) in full consideration of Plaintiff's agreement not to sue under the ADEA and the PHRA, Plaintiff received a continuation salary for a period of thirty-six (36) weeks, which the Plaintiff acknowledged he was not otherwise entitled to, See id. at ¶VII; 3) the Release contains all of the promises and understandings of the parties, See id. at ¶XII; 4) Plaintiff acknowledged that Defendant advised Plaintiff to consult with an

attorney before signing the Release, See id. at ¶XIII; 5) Defendant gave Plaintiff twenty-one (21) days from the date of receipt to sign the agreement, See id. at ¶XIII; and 6) Plaintiff was informed of his right to revoke his acceptance of the Release within seven (7) days of signing the Release, See id. at ¶XIV.

On July 20, 1999, Plaintiff filed a Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC"), which was approximately 495 days after the date of his termination. On March 1, 2000, the EEOC dismissed Plaintiff's Charge as untimely. The Plaintiff filed the instant suit in the Court of Common Pleas of Lehigh County on or about August 21, 2000. Defendant filed a Notice of Removal on September 21, 2000. Defendant filed a Motion To Dismiss on September 27, 2000, which this Court denied on November 2, 2000. Defendant filed its Answer and Affirmative Defenses on December 1, 2000.

Plaintiff's Complaint makes the following claims: Count I) age-based employment discrimination under the Age Discrimination In Employment Act ("ADEA"), 29 U.S.C. §§ 621 et seq.; and Count II) age-based employment discrimination under the Pennsylvania Human Relations Act ("PHRA"), 42 P.S. § 951, et. seq..

On August 17, 2001, Defendant Lehigh Valley Health Network filed a Motion for Summary Judgment. On October 26, 2001, Plaintiff filed a response to Defendant's Motion. On December

17, 2001, Defendant filed a reply brief to Plaintiff's Response. The Court now considers these filings.

II. LEGAL STANDARD

A. Summary Judgment Standard

Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment is appropriate if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322-23, 106 S. Ct. 2548 (1986). The party moving for summary judgment "bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact." Celotex, 477 U.S. at 323. When the moving party does not bear the burden of persuasion at trial, as is the case here, its burden "may be discharged by 'showing'--that is, pointing out to the district court--that there is an absence of evidence to support the nonmoving party's case." Id. at 325.

Once the moving party has filed a properly supported motion, the burden shifts to the nonmoving party to "set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). The nonmoving party "may not rest upon the mere allegations or denials of the [nonmoving] party's pleading," id., but must support its response with affidavits, depositions, answers to interrogatories, or admissions on file. See Celotex, 477 U.S. at 324; Schoch v. First Fidelity Bancorporation, 912 F.2d 654, 657 (3d Cir. 1990).

To determine whether summary judgment is appropriate, the Court must determine whether any genuine issue of material fact exists. An issue is "material" only if the dispute "might affect the outcome of the suit under the governing law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505 (1986). An issue is "genuine" only "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Id. If the evidence favoring the nonmoving party is "merely colorable," "not significantly probative," or amounts to only a "scintilla," summary judgment may be granted. See id. at 249-50, 252; see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586, 106 S. Ct. 1348 (1986) ("When the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to

the material facts." (footnote omitted)). Of course, "[c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge." Anderson, 477 U.S. at 255; see also Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992). Moreover, the "evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." Anderson, 477 U.S. at 255; see also Big Apple BMW, 974 F.2d at 1363. Thus, the Court's inquiry at the summary judgment stage is only the "threshold inquiry of determining whether there is the need for a trial," that is, "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Anderson, 477 U.S. at 250-52.

III. DISCUSSION

Defendant Lehigh Valley Health Network argues the following grounds in its Motion For Summary Judgment: 1) The Release complies with the OWBPA statutory requirements and therefore bars Plaintiff's ADEA Claim; 2) Plaintiff's execution of the Release bars his PHRA claim; and 3) Plaintiff's ADEA and PHRA claims are time-barred because he filed his EEOC Charge 495 days after his age discrimination claim accrued.

**A. Older Worker Benefit Protection Act ("OWBPA") and
Waiver of ADEA Claims**

Waivers of ADEA claims are governed by the OWBPA. See 29 U.S.C. §626(f). This statute provides that any waiver of rights or claims under the ADEA must be "knowing and voluntary" in order to be effective. Id. The Congressional policy behind the OWBPA is clear; Congress removed waivers of ADEA claims from the general realm of contract law and imposed specific statutory strictures on such waivers. See Oubre v. Entergy Operations, Inc., 522 U.S. 422, 426-27 (1998).

Among the requirements of the OWBPA regime are provisions that such waivers be written in ordinary language, see §626(f)(1)(a); that the waiver specifically refers to the rights being waived as rights arising under the ADEA, see §626(f)(1)(b); that the waiver is executed only in exchange for consideration in addition to whatever the employee may already be entitled, see §626(f)(1)(d); that the individual is advised in writing to consult with an attorney, see §626(f)(1)(e); that the employee is given at least twenty-one days within which to consider a proposed waiver, see §626(f)(1)(f)(i); and that the waiver agreement allows the employee a period of seven days following execution of the agreement within which to revoke acceptance without penalty, see §626(f)(1)(g).

It is clear that the OWBPA statutory requirements have been met in the instant case. First, the Release language was clear and unambiguous. See Release, attached to Def.'s Mot. as "Exh. C." Second, the Release specifically refers to Plaintiff's waiver of rights under the ADEA and the PHRA. See Release at ¶IV. Third, the Release did not require the Plaintiff to waive any future rights or claims. Fourth, Plaintiff waived his rights under the ADEA and PHRA in exchange for consideration of thirty-six (36) weeks of severance pay, which Plaintiff acknowledged he was not otherwise entitled to. Id. at ¶VII. Fifth, Plaintiff was advised in writing to consult with an attorney prior to executing the agreement. Id. at ¶XIII. Sixth, Plaintiff was given twenty-one (21) days to consider the Release. Id. at ¶XIII. Plaintiff was entitled to this twenty-one (21) day deliberations period because the record does not indicate, nor does the Plaintiff allege, that the waiver was requested in connection with an exit incentive or other employment termination program offered to a group or class of employees. Finally, the Release provided Plaintiff with a right to revoke the Release within seven (7) days of its execution. Id. at ¶XIV. Based on the plain language of the Release, therefore, Defendant has met the statutory requirements of OWBPA. See Sheridan v. The McGraw-Hill Companies, Inc., 129 F.Supp.2d 633, 638-40 (S.D.N.Y. 2001) (employer's

compliance with the OWBPA barred, as a matter of law, plaintiff's ADEA claims).

In spite of the fact that the instant Release meets the requirements of the OWBPA, the Plaintiff maintains that his waiver was still not knowing and voluntary. Plaintiff is correct that the OWBPA requirements set out in §626(f) are only minimum requirements to find a waiver knowing and voluntary, and that the ultimate test remains whether that waiver was in fact knowing and voluntary. See 29 U.S.C. § 626(f)(1) ("a waiver may not be considered knowing and voluntary unless at a minimum ..." it complies with the listed statutory requirements). Thus, a waiver that complies with OWBPA requirements but in other respects creates a climate of duress, for example, would not be knowing and voluntary.

However, the Plaintiff has not directed the Court to any evidence of duress or mistake that would make the Plaintiff's waiver ineffective. Plaintiff states in his Response that his emotions were overriding his intellectual processes when he reviewed the Release. See Pl.'s Resp. at 2. However, Plaintiff does not point to any evidence in the Record to support this claim. Furthermore, an unpleasant choice that is born of economic circumstances does not suffice to establish duress. See Strickland v. University of Scranton, 700 A.2d 979, 986 (Pa.

Super. 1997)). In the absence of threats or actual bodily harm, there can be no duress where the contracting party is free to consult with counsel. Id.

Moreover, there seems to be little doubt about Plaintiff's competency to enter into such a waiver. Plaintiff is well-educated, having obtained two post-graduate degrees. Plaintiff received his Bachelor of Science degree from St. Peter's College in 1962, a Masters in Public Administration degree from New York University in 1972, and a Masters in Business Administration degree from Case Western Reserve University in 1985. See Wastak Dep. at 18. Plaintiff also held a responsible position with LVH, serving as the Administrator of their Department of Psychiatry. See Compl. at ¶3. It is apparent, therefore, that Plaintiff's waiver of his ADEA claim was knowing and voluntary.

The Plaintiff's additional arguments as to the validity of the waiver are also without merit. Although Plaintiff signed the Release in March of 1998, he claims that he did not learn that he had been replaced by Gail Stern, who is fourteen years younger, until December 1998. Plaintiff concludes, therefore, that his prima facie case of age discrimination did not accrue until after he signed the Release. Plaintiff notes that the OWBPA expressly prohibits the waiver of claims that may arise after the date the waiver is executed. See 29 U.S.C. § 626(f)(1)(C).

Under Pennsylvania law, the accrual of a claim is governed by the discovery rule. A claim accrues upon "awareness of actual injury, not upon awareness that this injury constituted a legal wrong." See Bickings v. Bethlehem Lukens Plate, 82 F.Supp.2d 402, 409 (E.D.Pa 2000). The awareness of an injury, for accrual purposes, occurs when a plaintiff knew or should have known of the injury and that the injury had been caused by another party's conduct. Id. In the instant case, Plaintiff became aware of his injury on March 12, 1998, the date of his termination. Moreover, whether an employee was deceived regarding the underlying motive behind his discharge is irrelevant for purposes of the discovery rule. Id.

Plaintiff also appears to be unclear as to the required prima facie showing for age discrimination cases. To establish a prima facie case for employment discrimination, a plaintiff must show that (1) he is a member of a protected class, (2) he applied for and was qualified for the position, (3) he suffered an adverse employment action, and (4) others who are not members of his protected class were more favorably treated. Texas Dep't of Community Affairs v. Burdine, 450 U.S. 248, 252-53 (1981); McDonnell Douglas Corp. v. Green, 411 U.S. 792, 80(1973).

The ADEA does not require a plaintiff to show that he was replaced by someone under the age of 40; rather, the plaintiff

must merely point to evidence that creates an inference of discrimination. See Pivirotto v. Innovative Systems, Inc., 191 F.3d 344, 357 (3d Cir. 1999). The Record reflects that the Plaintiff believed inferences of age discrimination existed at the time of his discharge. Plaintiff stated that he believed that Dr. Kauffman was lying to him regarding the real reasons for his termination on March 12, 1998. See Pl.'s Resp. at 1. Plaintiff also testified that Defendant had a tendency to "get rid of older workers." See Pl.'s Resp. at 6; Wastak Dep. at 120.

Moreover, Plaintiff noted that a younger administrator in the Psychiatry Department had not been terminated, despite the fact that LVH was allegedly embarking upon a cost cutting effort. See Pl.'s Resp. at 6; Wastak Dep. at 121-122. Furthermore, Plaintiff alleged that other employees who had been terminated for performance reasons were permitted to transfer to other positions within the Hospital. See Pl.'s Resp. at 6. It is apparent, therefore, that Plaintiff's claim accrued on March 12, 1998, the date of his termination.

Plaintiff also asserts that the Release violates the OWBPA because it prevents Plaintiff from filing a charge with the EEOC. See Release at ¶IV. As the Plaintiff notes, the OWBPA prohibits waiver agreements from precluding individuals from filing a

discrimination charge with the EEOC.¹ However, it is the filing of the ADEA and PHRA claims that Defendant contests in the instant Motion, not the filing of the EEOC charge. The Plaintiff has not explained to the Court why the entire waiver that he knowingly and voluntarily entered into should be voided due to a provision that is inapplicable to the instant case. The Plaintiff's claims that his waiver was not knowing and voluntary, therefore, is without merit. Accordingly, based on the above analysis, Plaintiff is barred from asserting the instant ADEA claim.

B. Waiver of the PHRA Claim

Provisions of the OWBPA apply only to the ADEA and not to state law claims. See Branker v. Pfizer, 981 F.Supp. 862, 867 (S.D.N.Y. 1997) (OWBPA does not govern New York State age discrimination statutes). Under Pennsylvania law, the effect of a release is determined by the language's ordinary meaning. See Buttermore v. Aliquippa Hospital, 561 A.2d 733, 735 (Pa. 1989). A release not procured by fraud, duress, or mutual mistake is binding between the parties. Lanci v. Metropolitan Insurance Company, 564 A.2d 972, 974 (Pa. Super. 1989).

¹ 29 U.S.C. §626(f)(4) states that "[n]o waiver may be used to justify interfering with the protected right of an employee to file a charge or participate in an investigation or proceeding conducted by the Commission."

The instant Release bars the Plaintiff's PHRA claim for the same reasons that it bars Plaintiff's ADEA claim. As is discussed above, the language of the Release was clear and unambiguous, and the Plaintiff made a knowing and voluntary waiver of his right to pursue claims under the PHRA. See Release at ¶IV. Moreover, the Plaintiff has not made any showing of fraud, mistake or duress that would make his waiver of claims ineffective. Accordingly, Plaintiff is barred from asserting the instant PHRA claim.

IV. CONCLUSION

Based on the detailed OWBPA requirements being met, the competence of the Plaintiff, and the plain meaning of the Release, it is apparent that the Plaintiff is precluded from filing the instant lawsuit. Accordingly, the Court grants the Defendant's Motion for Summary Judgment. Because the Court finds that the Release document defeats the Plaintiff's claims, the Court need not address Defendant's argument regarding the timeliness of Plaintiff's filing.

This Court's Final Judgment follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN T. WASTAK	:	CIVIL ACTION
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	:	
v.	:	
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	:	
LEHIGH VALLEY HEALTH NETWORK	:	NO. 00-4797

FINAL JUDGMENT

AND NOW, this 27th day of March, 2002, upon consideration of Defendant Lehigh Valley Health Network's Motion for Summary Judgment (Docket No. 15), Plaintiff John R. Wastak's Response thereto (Docket No. 21), and Defendants' Reply Brief (Docket No. 22), IT IS HEREBY ORDERED that Defendant's Motion is **GRANTED.**

IT IS FURTHER ORDERED that Summary Judgment is entered in favor of Defendant and against Plaintiff.

BY THE COURT:

HERBERT J. HUTTON, J.